

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

EPCON COMMUNITIES CAROLINAS,)
LLC, and EPCON FARRINGTON, LLC,)

Plaintiffs,)

v.)

IRIS M. TILLEY, THOMAS E. TILLEY,)
MELBA GEORGE, BARBARA)
WRIGHT, and UNITED STATES OF)
AMERICA,)

Defendants,)

UNITED STATES OF AMERICA,)

Counter-Claimant,)

v.)

EPCON COMMUNITIES CAROLINAS,)
LLC, and EPCON FARRINGTON, LLC,)

Counter-Defendants,)

BARBARA WRIGHT,)

Cross-Claimant,)

v.)

UNITED STATES OF AMERICA,)

Cross-Defendant.)

11CV643

ORDER

On July 2, 2015, the United States Magistrate Judge's Order and Recommendation ("Recommendation") as to the United States' Motion for Judgment that Epcon Farm Trust is Nominee of Iris and Thomas Tilley (Doc. #60), Epcon Communities Carolinas, LLC's and Epcon Farrington, LLC's (the "Epcon Plaintiffs") Motion for Relief in the Nature of Interpleader (Doc. #83), the Epcon Plaintiffs' Motion for Judgment on the Pleadings and for Summary Judgment (Doc. #87), the Epcon Plaintiffs' Motion for Rule 54(b) Certification (Doc. #89), and the Epcon Plaintiffs' Consent Motion for Interpleader Order Pursuant to Settlement Agreements (Doc. #93) was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. (Docs. # 94, 95.) No objections were filed within the time limits prescribed by Section 636; therefore, the Court need not make a de novo review of the Recommendation. The Recommendation (Doc. #94) is hereby adopted.

For the reasons stated in the Recommendation, it is ordered that the United States' Motion for Judgment that Epcon Farm Trust is Nominee of Iris and Thomas Tilley (Doc #60) is **DENIED** without prejudice to refile during the subsequent proceedings to resolve the competing claims; that the Epcon Plaintiffs' Motion for Judgment on the Pleadings and for Summary

Judgment (Doc. #87) is **DENIED** as moot; that the Epcon Plaintiffs' Motion for Relief in the Nature of Interpleader (Doc. #83) and Consent Motion for Interpleader Order Pursuant to Settlement Agreements (Doc. #93) are **GRANTED** in that:

1. The Epcon Plaintiffs shall deposit the aggregate amount of \$2,025,000 (the "Interpleaded Funds") with the Clerk of Court within 10 days after the Order becomes final due to expiration of the deadline for appeal. The Interpleaded Funds shall be accepted by the Clerk and deposited in an interest-bearing account, and shall be held by the Court subject to the ultimate disposition of the competing claims for such funds between the United States, Thomas Tilley, Iris Tilley, Melba George, and Barbara Wright;
2. The Phase 2 property shall be discharged from the Federal Tax Liens, effective upon the Epcon Plaintiffs' deposit of the Interpleaded Funds, pursuant to the settlement agreement with the United States. The United States shall provide appropriate certificates of discharge under 26 U.S.C. § 6325(f)(1)(B) to evidence such discharge on the public record of Durham County;
3. The Promissory Note shall be deemed to be paid and satisfied in full and the Deed of Trust cancelled, both effective upon deposit of the

Interpleaded Funds by the Epcon Plaintiffs. Melba George, Barbara Wright, Thomas Tilley and Iris Tilley, and the Trustee under the Deed of Trust (or any substitute Trustee thereunder) shall execute all documents reasonably necessary to evidence the cancellation on the Durham County public record and provide the Epcon Plaintiffs with good and marketable title to the Phase 2 property free of the lien of the Deed of Trust under applicable North Carolina law and procedure. The Epcon Plaintiffs shall cause a copy of this Order to be served on the Trustee under the Deed of Trust and any substitute Trustee under that Deed of Trust so that they will be aware of their obligations under this Order.

4. All claims and counterclaims between the Epcon Plaintiffs, on the one hand, and the United States, Thomas and Iris Tilley, and Melba George and Barbara Wright, on the other hand, shall be dismissed with prejudice. Thus, all claims by and against the Epcon Plaintiffs will be dismissed, but all claims among the remaining parties, including any claims as to the Interpleaded Funds, will remain for further adjudication.
5. All parties shall bear their own fees, costs and litigation expenses with respect to the claims by and against the Epcon Plaintiffs.

6. The following limitations are specifically noted:

- a. This Order does not constitute a waiver or discharge of any federal tax liens with respect to any property owned by Thomas and Iris Tilley, except the Phase 2 property, nor shall it prohibit the United States from issuing new notices of levy to the Clerk of Court with respect to the Interpleaded Funds.
- b. This Order does not constitute a finding that any of the funds to be deposited with the Court are subject to valid federal tax liens or notices of levy.
- c. This Order does not address or resolve any claims or contentions among the remaining parties regarding the nominee or alter-ego status of any trusts associated in this action or whether their trustees are bona fide trustees of those trusts.

7. The Court retains all jurisdiction over any enforcement of this Order.

It is further ordered that the Epcon Plaintiffs' Motion for Rule 54(b)

Certification (Doc. #89) is **GRANTED** and the Court specifically certifies that, given that all claims by and against the Epcon Plaintiffs have been resolved and the Epcon Plaintiffs have no further interest in this action, there is no just reason for delay. A final judgment as to the Epcon Plaintiffs will be

entered contemporaneously with this Order.

This the 29th day of July, 2015.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge